



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
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June 3, 2005

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Senator Angela Z. Monson
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Commissioner R. Bruce Johnson
Utah Tax Commission
210 N. 1950 West
Salt Lake City, UT 84134

Dear Mr. Kranz, Senator Monson and Commissioner Johnson:

The State of New Jersey petitioned for membership in the Streamlined Sales and Use Tax Agreement on April 27, 2005. On May 25, 2005, we received a list of twelve comments of the Business Advisory Group on New Jersey's petition from Mr. Stephen Kranz, Tax Counsel for the Council on State Taxation. The purpose of this letter is to respond to the comments of Mr. Kranz.

The following is New Jersey's response:

1. Overall - The compliance review was completed on May 17, 2005, and was based on a review of both existing law and Senate 1958, 1st reprint, as reported by the Senate Budget and Appropriations Committee on March 7, 2005, with amendments; which is now pending in the NJ legislature. The proposed effective date of this bill is July 1, 2005. Failure of this bill to pass would mean that New Jersey is not in compliance with each provision of the Agreement, nor would it be in compliance with the Agreement taken as a whole on a qualitative basis.

Response: New Jersey's application was submitted based on New Jersey Senate Bill 1958 being enacted by July 1, 2005. The Division of Taxation remains hopeful the bill will be enacted timely and agrees that the failure to enact S-1958 by July 1, 2005 would result in New Jersey not being in compliance with a number of the Agreement's provisions.

2. Agreement §312(B), Multiple Points of Use - Language was added to this provision that suggests a need for prior approval of the method of allocation to be utilized by the purchaser ("...method of apportionment "approved by the director" that is supported by....."). This requirement is beyond the scope of the MPU provision in the Agreement. (See §27(c) of S. 1958.)

Response: Sec. 27(c) of proposed bill S-1958 will be amended to remove the words "...approved by the director."

3. Agreement §315(l), Telecommunication Sourcing Definitions - Language was added to the end of this provision, which references the Mobile Telecommunications Sourcing Act ("MSA") for defining the term. This will result in conflicts between the MSA and the Agreement's definition. (See §29(d) of S. 1958.)

Response: Sec. 27(d) of proposed bill S-1958 will be amended to remove the words "...and the terms used have the same meaning as those terms are defined by the federal "Mobile Telecommunication Sourcing Act" 4 U.S.C.S. 124."

4. Agreement §328(B), Taxability Matrix - There appears to be no statutory or regulatory language relieving CSP's or sellers from liability for reliance on erroneous data contained in the state's taxability matrix. It was suggested that N.J.S.A. §54:32B-14(f) be amended. (See §21 of S. 1958.)

Response: Sec. 27 of proposed bill S-1958 will be amended to add the words "...or contained in the taxability matrix" following "...or taxing jurisdiction assignments."

5. Agreement §329, Effective Date for Rate Changes - Section 329 of the Agreement is not addressed in New Section 33(a) of the current reviewed Senate 1958, as indicated on New Jersey's certificate of compliance. Section 329 of the Agreement addresses the issue of effective date for billing purposes, where the billing cycle is for a period that contains two different rates (i.e., March 16 – April 15). Preference would be to add statutory language, but the State could issue a regulation that provides how to administer this new section. (It is believed that the addition of subparagraph 10 to N.J.S.A. §54:32B-24, as amended by Bill Section 31 intended to address this issue, but is not clear in this regard.)

Response: Sec. 31 of proposed bill S-1958 will be amended to remove the words "...for services covering a period starting before and ending after July 1, 2005."

6. Library of Definitions, Prepared Food - Under the New Jersey definition for prepared food as provided by N.J.S.A. §54B:32-3(c)(2), and as amended by

Bill Section 3 of S. 1958, the following phrase was omitted, "A plate does not include a container or packaging used to transport the food."

Response: Sec. 2 of proposed bill S-1958 will be amended to read as follows: "food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. "A plate does not include a container or packaging used to transport the food; provided however, that "prepared food" does not include the following sold without eating utensils:"

7. Library of Definitions, Prepared Food - Under the New Jersey definition for prepared food as provided by N.J.S.A. §54B:32-3(c)(2), and as amended by Bill Section 3 of S. 1958, the following phrase was omitted in reference to what prepared food does not include, "when sold without eating utensils."

Response: Sec. 2 of proposed bill S-1958 will be amended to read as follows: "food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. "A plate does not include a container or packaging used to transport the food; provided however, that "prepared food" does not include the following sold without eating utensils:"

8. Various Provisions, Rentals / Leases - Deleted language from Section 7 of S. 1958, which amends N.J.S.A. §54:32B-7(c) is almost identical to amended language. It appears that the provisions which were going to be inserted from the amendment were replaced with identical language, rather than the revised language.

Response: Sec. 5 of proposed bill S-1958 will be amended to remove "at the option of the lessor" from 7(c) and 7(d).

9. Library of Definitions, Prosthetic Devices & Durable Medical Equipment - Section 7 of S. 1958, which amends N.J.S.A. §54:32B-8.1 limits the exemption for certain healthcare items to those sold for "human use." Under the Agreement, drug is the only defined term that expressly provides that an exemption can be enacted by a state for "human use." As a result, the limitation "for human use" cannot be utilized for the defined terms of prosthetic devices and durable medical equipment.

Response: New Jersey taxes the prosthetic devices and durable medical equipment used for or by animals. As such, it is appropriate that New Jersey, while using the definitions in their entirety, as set forth in the Agreement, limit the exemption to humans. It is New Jersey's view that the

definition has been fully adopted and it is New Jersey's drafting convention to reflect the use based exemption in this manner.

10. Library of Definitions, Drug - Section 7 of S.1958, which amends N.J.S.A. §54:32B-8.1, provides a limitation under the definition of drug under (b)(3) – the word “human” should be deleted.

Response: Sec. 7 of proposed bill S-1958 will be amended to remove “human” from 13(b)(3).

11. Library of Definitions, Grooming & Hygiene - Section 7 of S.1958, which amends N.J.S.A. §54:32B-8.1(13), contains an incorrect word – the word “lotion” should be replaced with “solution.”

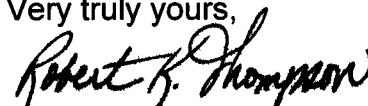
Response: Sec. 7 of proposed bill S-1958 will be amended to remove “lotion” and replace it with “solution”.

12. Library of Definitions, Food & Food Ingredients - Section 8 of S.1958, which amends N.J.S.A. §54:32B-8.2(14), contains language that should be replaced with the specific terms, as these terms have already been identified under other provisions. The language, “substances that contain.....or pipe tobacco,” should be replaced with “alcoholic beverages or tobacco.”

Response: Sec. 8 of proposed bill S-1958 will be amended to remove “...substances that contain one-half of one percent or more alcohol by volume or items that contain tobacco, such as cigarettes, cigars, chewing tobacco or pipe” and adding “tobacco” following “...alcoholic beverages or...”

I will be happy to provide additional information as necessary regarding questions the Group may have regarding New Jersey's compliance with the Agreement.

Very truly yours,



Robert K. Thompson
Director
Division of Taxation

RKT:HEF/pra

cc: Scott Peterson, Interim Director, Conforming States
Commissioner Loren L. Chumley, Conforming States Committee Co-Chair
Senator Dwight Cook, Conforming States Committee Co-Chair
Members, Streamlined Sales Tax Implementing States